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Robert E. Dvorak

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EXAMINER

VAN DOREN, BETH

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/766,539

Applicant(s)

DVORAK, ROBERT E.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-119 is/are pending in the application.
- 4a) Of the above claim(s) 24-115 and 117-119 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 116 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20050316.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The following is a non-final office action in response to communications received 11/30/2005. In this communication, Applicant has elected Group I (Claims 1-23 and 116) with traverse. Therefore, claims 24-115 and 117-119 have been withdrawn from consideration and claims 1-23 and 116 are pending and addressed below.

Examiner Notes

2. Examiner notes the Applicant's request for representative examination. However, since the proposal for representative examination has not matured into policy, Examiner will continue to examine this Application using current practice.

Election/Restrictions

3. Applicant's election with traverse of Group I (Claims 1-23 and 116) in the reply filed on 11/30/2005 is acknowledged. The traversal is on the grounds that there is not two way distinctness in the restriction of the subcombinations, that the Examiner never uses the language "serious burden" in the restriction requirement, and that it is too late to claim serious burden for searching groups I-V together as searches have previously been performed. This is not found persuasive because, first, restriction to the claims may be made at any time before final action. Examiner points out that amendments were made to the claims, which prompted Examiner's restriction requirement being asserted. Therefore, it is not too late to claim serious burden.

Examiner points out that this was a complex restriction requirement and that only groups II-V were restricted as subcombinations useable together. Examiner maintains that there is two-way distinctness between each of these groups. For example, group II is a support system that generates an open to buy report, which is distinct from group III's utilization of markdown

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management reports, group III not generating or using any open to buy report. Further, group II is distinct from group III since group II does not require nor generate such a markdown management report. Examiner next asserted that Group I (claims 1-23 and 116) links invention II-V. Finally, Examiner asserted that Groups I-V and VI are related combination and subcombination.

Therefore, based on the different searches required and the differences set forth in the restriction required of 10/31/05, examiner maintains that there is serious burden.

The requirement is still deemed proper and is therefore made FINAL.

Claim 24-115 and 117-119 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11/30/2005.

Response to Amendment

4. Applicant's changes made to the drawings are sufficient to overcome the drawing objections set forth in Examiner's 04/27/2005 office action.

5. Applicant's amendments to the specification are sufficient to overcome the specification objections set forth in Examiner's 04/27/2005 office action.

6. Examiner withdraws the claims objections set forth in the 04/27/2005 office action.

However, new claim objections have been established below.

Claim Objections

7. Claim 116 is objected to because it contains the language "PQ" without providing the terms for which it stands. Clarification is required. For examination purposes, "PQ" has been interpreted as Presentation Quantity.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-23 and 116 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The claim recites a decision support system with a presentation demand calendar and one or more additional analysis programs. However, it is unclear as to how the one or more additional analysis programs functionally interrelate with the rest of the claim. Therefore, it appears that an element is missing in the claims that connects the additional analysis programs and the presentation calendar or decision support system. Clarification is required.

Claims 2-23 and 116 depend from claim 1 and contain the same deficiencies.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1 and 4-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Landvater (U.S. 6,609,101).

As per claim 1, Landvater teaches an improved management decision support system, including a computer system having memory and resources, a retail demand forecasting program applying one or more forecasting approaches, running on the computer system and generating output, and a set of analysis programs, running on the computer system and utilizing the output, said analysis programs generating at least one of (a) order of goods from a supplier-related data, (b) allocation of the goods to be shipped by the supplier-related data, or (c) distribution of goods to selling locations-related data (See figures 1, 2, 5, 9, and column 8, lines 9-40), the improvement comprising:

a presentation demand calendar utilized by the forecasting program to generate the output, said presentation demand calendar associating with a plurality of good-selling location pairs, data including a good identifier, a selling location identifier, a presentation demand type that selects one of a plurality of alternative treatments of presentation demand, and one or more presentation quantities each associated with a start date and a stop date (See figures 14, 15, 18, and 22, column 6, lines 45-60, column 8, lines 15-38, column 14, lines 25-50, column 17, lines 45-57, column 19, lines 9-17, and column 21, lines 15-25, wherein a presentation demand calendar is used with the forecasting program to determine stock and replenishment for each of the retail locations. Schedules of dates associated with presentations, replenishments, etc. are

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stored in the system. The products are stored on a per product per location basis (i.e. identifying the retail store and product to be at that retail store). Shelf configurations (i.e. presentation treatment) and quantities needed for these configurations are stored in the system with a start date and the next start date for a future configuration, the start date for the future configuration being a stop date for the current configuration); and

one or more additional analysis programs in the set of analysis programs generating at least two of: open to buy analysis, markdown management analysis, promotional forward buying analysis, or bottom-up planning analysis (See figures 19-21 and column 17, lines 5-55, which disclose promotions planning. See figure 2 and column 20, lines 30-50, which discusses OTB management by considering the financials and inventory budget).

As per claim 4, Landvater teaches wherein the start dates and stop dates for the one or more presentation quantities define non-overlapping periods (See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein a presentation ends when another begins in the planning of the system for the same item).

As per claim 5, Landvater teaches wherein the start dates and stop dates for the one or more presentation quantities define overlapping periods (See figures 14, 15, 18, column 6, lines 45-60, column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 23, lines 45-65, wherein start and stop dates exist for different products thought the system and therefore the presentation of product A and product B would differ, and thus, overlap).

As per claims 6 and 7, Landvater teaches wherein the good identifier associated with good-selling location pairs includes a good number and a good description and Landvater also

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teaches a good description table (See column 8, lines 5-25, wherein the good identifier includes the good number on hand and a product description, which are stored in the database).

As per claims 10-12, Landvater teaches wherein the set of analysis programs is adapted to basic retail goods, to seasonal retail goods, and to fashion retail goods (See column 10, lines 30-45, column 12, lines 9-40, column 15, lines 25-50, and column 19, lines 5-20, wherein the program considers basic goods, retail goods, and seasonal goods of retailers).

As per claim 13, Landvater teaches wherein the set of analysis programs operate on daily or more frequent period forecasts (See figure 8, column 10, lines 20-50, column 13, lines 30-36 and 49-58, which discusses daily forecasts).

As per claim 14, Landvater teaches wherein the set of analysis programs operate on weekly forecasts (See figure 8, column 10, lines 20-50, column 11, lines 1-25, and column 21, lines 15-35, which discuss weekly forecasts).

As per claim 15, Landvater teaches wherein the set of analysis programs operate on pairings of individual goods in individual selling locations (See column 8, lines 5-25, column 11, lines 20-32, column 17, lines 35-57, column 19, lines 5-17, column 23, lines 45-65, which discuss goods at individual locations).

As per claim 16, Landvater teaches wherein the set of analysis programs operate on groups of goods in individual selling locations (See column 5, lines 1-5, column 8, lines 5-25, column 11, lines 20-32, column 15, lines 25-45 and 55-65, column 23, lines 45-65, which discuss groups of goods).

As per claim 17, Landvater discloses wherein the set of analysis programs operate on individual goods in groups of selling locations (See column 5, lines 1-5, column 6, lines 45-60,

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column 8, lines 5-25 and 50-65, column 11, lines 20-32, which discuss individual goods at multiple selling locations, and overriding occurs).

As per claim 18, Landvater teaches wherein the set of analysis programs operate on groups of goods in groups of selling locations (See column 5, lines 1-5, column 6, lines 45-60, column 8, lines 5-25 and 50-65, column 11, lines 20-32, column 15, lines 25-45 and 55-65, wherein goods are grouped and projected across the retailers).

As per claim 19, Landvater teaches wherein the analysis is displayed on a monitor in communication with the computer system (See figures 4 and 22, column 7, lines 35-50, column 21, lines 15-35, which discusses a monitor in connection with the system).

As per claim 20, Landvater teaches wherein the analysis is saved in spreadsheet file format (See column 21, lines 15-40, which teaches spreadsheets).

As per claim 21, Landvater discloses wherein the analysis is printed on paper, microfiche, or optical media (See column 7, lines 35-50, wherein the analysis is placed on optical media).

As per claim 22, Landvater teaches wherein the analysis is distributed by e-mail or other messaging facility (See figure 3, column 7, line 50-column 85 and 25-45, column 21, lines 15-34 and 41-50, column 22, lines 30-55, wherein the forecasting and other analysis is transmitted in a client server environment).

As per claim 23, Landvater teaches wherein the analysis is utilized as input to an additional process (See figures 2 and 22, column 7, lines 35-50, column 20, lines 30-50, wherein the analysis is used with other analyses).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Landvater (U.S. 6,609,101).

As per claims 2 and 3, Landvater teaches wherein the start date is stored explicitly and the stop date is stored implicitly and associated with a memory location in which the presentation quantity is stored (See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein the start date is explicitly stored and the stop date is implicitly stored).

However, Landvater does not expressly disclose that the start date is implicitly stored and that the stop date is explicitly stored.

Landvater discloses shelf configurations (i.e. presentation type) and quantities needed for these configurations are stored in the system, wherein the start date for the current configuration is stored, as well as the next start date for a future configuration, and thus the future date is the stop date of a current configuration. Landvater discloses the importance of the system knowing the dates for specific shelf configuration so that the system may functionally plan for such events. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to store start and stop dates so that they are known to the system, whether implicit or explicitly, in order to more efficiently maintain attractive displays by more accurately calculating

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the needed stock to support the display during the display period. See column 14, lines 25-35 and 55-65 of Landvater.

14. Claim 116 is rejected under 35 U.S.C. 103(a) as being unpatentable over by Landvater (U.S. 6,609,101) in view of Display Unlimited (www.displayunlimited.com).

As per claim 116, Landvater teaches wherein the presentation demand calendar further includes: a schedule of different displays including display identifiers for a plurality of display types present at particular selling locations (See column 14, lines 25-58, wherein different displays are scheduled, such as shelves and floor models); and

one or more presentation quantity tables, the presentation quantity tables associating with a plurality of good-selling location pairs, data including the display identifier, the good identifier, the selling location identifier, and the one or more presentation quantities each associate with the start and stop dates (See figures 14, 15, 18, and 22, column 6, lines 45-60, column 8, lines 15-38, column 14, lines 25-50, column 17, lines 45-57, column 19, lines 9-17, and column 21, lines 15-25, wherein schedules of dates associated with presentations, replenishments, etc. are stored in the system. The products are stored on a per product per location basis (i.e. identifying the retail store and product to be at that retail store). Shelf configurations (i.e. presentation type) and quantities needed for these configurations are stored in the system, wherein the start date is stored, as well as the next start date for a future configuration, and thus the stop date of a current configuration. Further, display types are discussed, such as a shelf or a floor model).

However, while Landvater discloses a number of shelf configurations, shelves versus floor displays, and storing information concerning the shelves and displays in the system,

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Landvater does not expressly disclose specific display fixtures including fixture identifiers and quantities of the fixture, or data including a fixture identifier associated with the PQ tables.

Display Unlimited discloses different types of display fixtures and using these identified fixtures in retail environments (See pages 1, 4, and 5).

Landvater discloses alternative treatments of presentation demand (i.e. different shelf configurations) as well as different types of display (shelves and floor models). Landvater stores information concerning these presentations and displays in the system. Examiner points out that different fixtures types and the scheduling of different fixture types for store resets and remodels are well-known in the retail industry. Examiner further points out the recitation of display fixtures is non-functional data since the data is merely being stored, and therefore the system is capable of storing such data, regardless of what the data represents. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include data representing the fixture types of Display Unlimited in the data already stored by Landvater concerning displays and shelves in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

Response to Arguments

15. Applicant's arguments filed 08/05/2005 with regards to the rejections based on Landvater (U.S. 6,609,101) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that Landvater does not teach or suggest (1) an open to buy report and (2) a presentation calendar including a presentation type for handling multiple types of presentations.

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In response to argument (1), Examiner respectfully disagrees. Applicant has defined Open-to-Buy (OTB) management on page 9 of the originally presented specification as predicting future inventory levels based on the current inventory, expected sales, etc., and comparing the future inventory levels to budget levels. Landvater discloses predicting the inventory for the future based on expected future sales and the financial budgets set forth by the financial planning system. See specifically column 20, lines 30-50, which discusses using a financial planning system to project future sales estimates and compare these estimates to budgets and financial data. The projected financial plan reveals the projected gross margins and projected inventory investment, and allows for the determination of replenishment shipments.

In response to argument (2), Examiner points out that claim 1 recites “a presentation demand type that selects one of a plurality of alternative treatments of presentation demand”. Landvater discloses multiple configurations for products on shelves and on display at a retail store, these multiple configurations being alternatives ways to handle presentation requirements. The system of Landvater calculates a sales forecast for a product and based on this forecast and the presentation configuration (or type), the system determines the replenishments to stock needed. See figures 14, 15, 18, and 22, column 8, lines 15-38, column 14, lines 25-50, column 15, lines 1-20, and column 21, lines 15-25, wherein shelf configurations (i.e. presentation treatment) and quantities needed for these configurations are stored in the system with a start date and the next start date for a future configuration, the start date for the future configuration being a stop date for the current configuration.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Garage et al. (U.S. 2002/0099597) teaches determining a mix of products for retail stores, the database of the system including a planogram.

Dick et al. (U.S. 2002/0128890) discloses supply chain management in a retail environment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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February 2, 2006

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